IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26/03/2004

CORAM

THE HONOURABLE MR.JUSTICE V.KANAGARAJ

SECOND APPEAL NO.533 of 1993

1. Raman
2. S.S.Visvanatha Iyer. .. Appellants

-Vs-

1. Balammal
2. Singaravelu
3. K.Velusamy
4. K.Palanisamy
5. K.Manickam
6. K.Balaji
7. K.Sakthivel
8. K.Thillai Ammal .. Respondents

The above Second Appeal is preferred U/s 100 of C.P.C. as stated therein.

For Appellants :Mr.K.Venkatasubramanian

For Respondents :Mr.K.Ramu

:JUDGMENT

This Second Appeal is directed against the judgment and decree dated 23.4.1992 rendered in A.S.No.58 of 1982 by the Court of Subordinate Judge, Mayiladuthurai, thereby reversing the judgment and decree dated 2.4.1982 rendered in O.S.No.422 of 1979 of by the Court of District Munsif, Tiruvarur.

2. Tracing the history of the above second appeal coming to be preferred what comes to be known is that the appellants herein have filed the suit in O.S.No.422 of 1979 on the file of the Court of District Munsif, Tiruvarur against the father of the respondents for recovery of possession of the suit property, for recovery of Rs.780/- and for costs on averments such as that the suit property belongs to the first plaintiff absolutely; that he got the same by a registered Will dated 2.6.1971 executed by one Alamelu Ammal, who was the grand mother of the second plaintiff; that the defendant had been residing in the suit property, which is a tiled house, as a tenant under the said Alamelu Ammal and after her death, under the first plaintiff; that the tenancy is oral and the rent is Rs.5/- per mensem for the house alone; that

there are 9 coconut trees and for the coconut trees, as per the oral agreement between the parties, the defendant has to give 40 0 coconuts per year as rent; that the defendant wilfully defaulted to pay rent for 2 years and the coconuts for 3 years prior to December 1972 and hence the first plaintiff gave a registered notice to the defendant terminating his tenancy with the end of 31.1.1973 further demanding possession of the suit property; that the defendant is bound to give 1200 coconuts for 3 years; that the defendant is liable to pay Rs.600/- towards the value of the said coconuts and Rs.180/towards damages for use and occupation of the suit property for 3 years at the rate of Rs.5/- per month; that the defendant is bound to put the plaintiffs in possession of the suit property and he is liable to pay the suit amount; that the defendant is not entitled to any benefits under Act 40/1971. On such averments, the plaintiffs would pray for the relief extracted supra.
3. In the written statement filed by the deceased defendant, besides generally denying the allegations of the plaint, he would further specifically allege that the suit house is a thatched house and partly tiled house; that since the defendant had constructed the superstructure several years before, the entire house and the superstructure belongs to the defendant; that the plaintiffs are not the owners of the house; that the defendant is paying taxes for the house for many years; that the assessment also stands in the name of the defendant; that there was no tenancy agreement to pay Rs.5/- per month as rent; that there was no agreement to pay 400 coconuts per year; that in fact, all the coconut trees have been raised by the defendant several years back; that the 2nd plaintiff, some 20 years back, ordered to pull down a portion of the tiled house in order to take out the bars and other materials to utilise in the renovation of his own house; that after the removal, the defendant constructed a pucca tiled and thatched house at his own costs; that the defendant is an agriculturist and his principal means of livelihood is only agriculture; that the defendant is entitled to the benefits of the Tamil Nadu Occupants of Kudiyiruppu Act 40/1971; that further, the defendant was given the assignment of the suit land by the competent authority and the patta has also been issued in his name long back; that as per the order of patta, the coconut trees were also vested with the defendant; that under Section 23 of the Tamil Nadu Act 40/1971, no civil court shall have jurisdiction in respect of any matter which the Government or the authorised officer is empowered by or under this Act; that since the ownership of the suit property is vested with the defendant as per the Act 40 /1971, the defendant is not liable to pay any amount as claimed by the plaintiff; that the claim for damages and mesne profits are not sustainable in law; that the description of the property offered in the plaint is incorrect. On such averments the defendant would pray to dismiss the suit with costs.

4. The trial Court, based on these pleadings, would frame 5 issues for determination of all the questions which are involved in the whole suit viz., (1) Whether the plaintiff is the owner of superstructure? (2) Whether the defendant has become the owner of the site? (3) Whether the plaintiff is entitled to possession? (4) What is the quantum of damages, if any, the plaintiff is entitled to? (5) To what relief, if any is the plaintiff entitled? Thereupon, the trial Court would allow the parties to record their evidence both oral and documentary as a result of which on the part of the plaintiffs, the second plaintiff would examine himself as P.W.1 for oral

evidence, besides marking 16 documents as Exs.A1 to A16 for documentary evidence.

5. Likewise, on the part of the defendant he would not only examine himself as D.W.1 for oral evidence in confirmation of his case put up counter to the plaintiff's case, but also would mark 19 documents for documentary evidence as Exs.B1 to B19.

6. The trial Court, having traced the facts and circumstances of the case in the manner required by law and in appreciation of all these evidence placed on record in the context of the facts and circumstances of the case put up by the plaintiff and the defence case placed on record has ultimately decreed the suit with costs, further granting one month's time to the defendant for handing over possession of the suit property to the plaintiffs, testifying the validity of which the defendant has preferred an appeal in A.S.No.58 of 1982 on the file of the Court of Subordinate Judge, Mayiladuthurai and the said Court also having traced the facts and circumstances as put-forth by parties before the trial Court and the other aspects relevant for consideration would frame four points for determination of the appeal viz.:

(1) Whether the defendant is entitled to the benefits of Act 40/1971? (2) Whether the Court of District Munsif has jurisdiction to try the suit? (3) Whether there is any landlord-tenant relationship between the first plaintiff and the defendant? (4) Whether the eviction notice issued by the plaintiffs is proper and sustainable in law?

7. Thereupon, the appellate Court, in appreciation of the facts pleaded and the circumstances brought-forth and the evidence placed on record, would reverse the findings of the trial Court in its judgment and decree, thus allowing the appeal preferred by the defendant with costs, as a result of which, left with no option, the plaintiffs in the suit have now come forward to prefer the above second appeal on grounds such as that the judgment of the lower Appellate Court is vitiated in its placing the burden of proof on the plaintiff, when the defendant denied the title of the plaintiff especially to the superstructure; that the Court below failed to see that the lease comprised of both the site and superstructure and not the site alone and hence the plaintiffs are entitled to the reliefs prayed for; that the learned Subordinate Judge failed to see that the defendant who pleaded title to the superstructure has not substantiated his claim and hence the lease must be deemed to include both the site and the superstructure; that the learned Subordinate Judge failed to see that as no notice was ever given to the plaintiffs or any enquiry conducted for the issue of patta, Exs.A4 to Ex.A16 are not valid and binding and that the civil court has jurisdiction to determine the question whether the procedure prescribed by the provisions of the Act have been complied with; that the learned Subordinate Judge failed to see that the mere fact that property tax was paid by the defendant will not clothe him with any title to the suit property unless it is proved that the defendant has erected the same; that the learned Subordinate Judge erred in not taking note of the averments in the written statement wherein the defendant denied the title of the plaintiffs and pleaded that the entire house

and superstructure belong to him and in view of denial of title, he has no right to put-forth the plea under Tamil Nadu Act 40 of 1971; that the learned Subordinate Judge failed to see that only if the defendant accepted the title of the plaintiffs to the site and claimed tenancy in respect of the site and that he put up the superstructure, he will be entitled to claim the benefits of Tamil Nadu Act 40 of 1971; that the learned Subordinate Judge ought to have seen that as the plaintiffs own the site and the superstructure which was leased to the defendant, the Tamil Nadu Act 40 of 1971 is not applicable to the facts of the present case; and that the learned Subordinate Judge ought to have accepted the contentions of the plaintiffs and dismissed the appeal.

8. This Court, at the time of admission, the following substantial questions of law have been framed for determination of the questions involved in the second appeal: 1) Whether the lower appellate Court erred in law in granting relief to the defendant under Tamil Nadu Act 40 of 1971 when the defendant denied the title of the plaintiffs to both the site and superstructure?

2) Whether the lower appellate Court erred in dismissing the suit when the defendant has not discharged the onus that lay on him viz., that he put up the superstructure after taking the site on lease or under permission from the plaintiffs?

9. During arguments, the learned counsel appearing on behalf of the appellants besides reiterating what has been brought-forth in the grounds of appeal would also cite the following judgments respectively reported in:

1)1979(II)MLJ 47 (Boologanathan v. P.Govindarajan and others) 2) 1981 (I) MLJ 506 (T.K.Narayana Pillai v. Naganatha Iyer) and 3) 1990-1-L.W. 148 (M.V.Krishna Iyer v. C.Royappan and others)

10. So far as the first judgment cited above is concerned, a learned single Judge of this Court, way back in the year 1979, has held:

"By reason of the definition of "kudiyiruppu" contained in Section 2 (6) of the Tamil Nadu Occupants Kudiyiruppu Act, the lease or licence to enjoy should have been only in respect of sites. The definition does not apply to a pucca building which an agriculturist may take on lease. By Explanation I to sub-section (8) of section 2 of the Act, a presumption is raised, viz., "any person occupying the kudiyiruppu is an agricultural labourer or an agriculturist until the contrary is proved". To hold that the site of any dwelling house or hut is a kudiyiruppu one has to ascertain whether the occupant either as a tenant or as a licensee is an agriculturist or an agricultural labourer. No presumption that any person is an agriculturist or an agricultural labourer can be made till the date of the dwelling house or hut in his occupation is found to be a kudiyiruppu. Therefore the presumption raised by the explanation is of no avail to any party who claims to be an agriculturist merely on the basis of a contention that the site in his occupation is kudiyiruppu. An agriculturist can claim that the site of the dwelling house or hut in his occupation is kudiyiruppu only if he is tenant or a licensee in respect of the site alone".

11. In the second judgment cited above also a learned single Judge of this Court, way back in the year 1980, has held:

"If once a tenant openly denies the title of the lessor or pleads jus tertii, then it automatically follows that he would not be considered as a tenant for any purpose whatsoever, as under Section 111(g) of the Transfer of Property Act by such open denial of title or by pleading jus tertii, there is a forfeiture of the tenancy and the relationship of landlord and tenant is snapped thereby. The fact that he remains in possession of the premises and pays, what according to him, is rent or is prepared or willing to pay such rent, could only, in the circumstances, be understood as money paid towards damages for use and occupation. Juridical possession, therefore, is the essence for the creation of the relationship of landlord and tenant. Once there is a snapping of the relationship by a volunt ary act of omission or commission on the part of the person in occupation as tenant then, he cannot inconsistently claim such a legal status under any provision of law".

11. In the third judgment cited above, yet another learned single Judge of this Court has again held: "The law has more or less become settled, viz., that the provisions of the Act cannot be applied to a case where a person claims Kudiyiruppu patta on the plea that both the land and the building together were taken on lease/licence by him from the same person who is the owner thereof or where, on facts, it is proved so".

On such arguments, the learned counsel appearing for the appellant would ultimately pray to allow the appeal setting aside the judgment and decree passed by the first appellate Court and restoring the judgment and decree passed by the District Munsif thus to decree the Suit.

12. On the contrary, on the part of the learned counsel appearing on behalf of the respondents, he would exhort that the trial Court did not consider Exs.B.5 to B.19 the house tax receipts, standing in the name of the defendant; that regarding denial of the title, nowhere the title has been denied and would cite paragraph 9 of the appellate Court judgment and at this juncture, the learned counsel would lay emphasis that till date the appellant has not taken the least step to cancel the patta granted in favour of the respondent; that there is no whisper nor any consideration made by the trial Court regarding Exs.B.5 to B.19 and no interference need be made into the well considered and merited judgment and decree passed by the appellate Court. On such arguments, the learned counsel would seek to dismiss the appeal with Costs.

13. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for both, what comes to be known is that it is a suit filed by the appellant herein in O.S.No.422 of 1979 on the file of the Court of the District Munsif, Thiruvarur for the recovery of possession of the suit property and for recovery of a sum of Rs.780/- and for costs on averments as extracted supra stating thereby that the plaintiff became entitled to the suit property by means of a registered Will dated 2.6.1971 executed by one Alamelu Ammal and on her death, in the same year, the first plaintiff became the absolute owner of the suit property

and thus he became entitled to the ground and the superstructure and let out the same in favour of the defendant on a monthly rent based on an oral tenancy agreement on certain terms and conditions as brought forth in the pleadings of the plaintiffs and hence praying for the relief extracted supra.

14. On the part of the respondents, as defendants they would not only deny the ownership of the house which is partly a tiled one and partly thatched but also would emphatically deny that every suit property was let out in favour of the defendants thus absolutely denying that there was tenancy agreement entered into in between the parties; that they are entitled to the benefits of the Tamilnadu Occupants of Kudiyirippu Act 40 of 1971; that the deceased defendant has also been issued with the patta for the suit property long back and therefore, would state that the plaintiffs have no right to file the suit on false allegations that they are having any right over the suit property; that the trees were planted by the defendant only, further denying that he is due to pay any rent much less in cash and kind and the claim of the plaintiffs is bogus and ultimately pray to dismiss the suit with costs.

15. On these pleadings, the trial court would only frame certain issues, as extracted supra, regarding the ownership of the site and superstructure and regarding the entitlement of the possession and the other rights, if any, enjoyed by the appellants/plaintiffs. But, the trial court never bothered about solving the legal question raised on the part of the deceased defendant to the effect that he was entitled to the benefits of Act 40 of 1971 and without solving this legal question the trial court has gone into assessing the facts on evidence adduced by parties, both oral and documentary, and on such factual conclusions arrived at, without the legalities being looked into, the trial court has arrived at the conclusion to accept the case of the plaintiffs thus ultimately decreeing the suit in their favour.

16. But, the appellate court, on appeal, had reversed the said finding on valid reasons, framing valid points, including one pertaining to the pleadings of the defendants regarding their entitlement to the benefit of the Tamilnadu Occupants of Kudirippu Act 40 of 1971 and would arrive at the valid conclusion not only to allow the appeal in full but also to set aside the judgement and decree passed by the trial court. It is only testifying the validity of this judgement passed by the lower appellate court, the plaintiffs in the suit have come forward to prefer the above second appeal on such grounds as brought forth in the grounds of appeal supra.

17. This Court is able to find that the first appellate Court has carefully traced the facts and circumstances as pleaded by the parties before the trial Court and defects held by the trial Court in framing of the issues further framing proper points on legal and factual questions involved in the whole of the case particularly for the pleading of the defendants claiming entitlement for the benefits of the Tamil Nadu Occupants of Kudiyiruppu Act (Act 40/1971) and on its own discussions, on evidence made available and in proper appreciation of the evidence and the position of law,

would ultimately arrive at the conclusion to reverse the findings rendered by the trial Court.

18. In fact, the judgments 2 and 3 cited above by the appellants were cited even before the appellate Court and it has considered the same along with two more judgments the first one delivered by the Honourable Apex Court reported in AIR 1970 SC 1197 and yet another judgment reported in 1989 TLNJ 322.

19. The judgment submitted anew before this Court is by a learned single Judge of this Court rendered in the judgment first cited above. It is only regarding the open denial of the title of the lessor by the tenant which has no reason to be cited before this Court in a case where the plaintiff has pleaded, imaginarily, tenancy rights for 3 0 years as though he has been obstructed by some one from raising the default committed on the part of the defendant in the terms of tenancy agreement which is said to be oral. In fact, it is a false and bogus plea taken on the part of the plaintiffs to show some nexus for them to the suit properties, since no landlord-tenant relationship has been either established or accepted, this judgment is applicable only in cases of tenancy and the same cannot be applied to the facts in hand and hence this judgment is also rejected as not applicable to the facts of the case in hand.

20. In short, it is sure that the title of the plaintiffs to both the site and the superstructure are denied by the defendant and the same is accepted by the first appellate Court in the right manner thus granting relief to the defendant and even the first appellate Court has accepted the right of the defendant to be entitled to the benefits of the Tamil Nadu Occupants of Kudiyiruppu Act (Act 40/1971) and further since the first appellate Court has not only arrived at the right conclusion but also without committing any error pertaining to the manner in which it has arrived at such conclusions, this Court, does not want to interfere with the judgment and decree of the first appellate Court thus deciding the first substantial question of law in favour of the respondents and against the appellants.

21. So far as the second substantial question of law is concerned, it must be stated that the defendant, so far as he is concerned as the defendant in the suit, has discharged his part of the burden cast on him and the onus regarding the whole frame of the case is cast heavily on the plaintiffs since they have come forward to file the suit before the trial Court, dragging the defendant also, regarding either the existence or non-existence of certain facts in issue and therefore, they cannot equate themselves with the defendant regarding the burden of proof and the onus is heavily cast on the plaintiffs not only regarding the possession of the suit property but also to prove his ownership filing the suit for declaration of his title and other reliefs which they have failed to do and therefore the second substantial question of law is also answered against the appellants and in favour of the respondents.

22. In short, this Court is not able to find any legal

inconsistency or infirmity or patent error or perversity in approach or application of law to the facts and circumstances of the case by the first appellate Court. It is not only the decision arrived at by the first appellate Court but also the manner in which the first appellate Court has arrived at its decision in full appreciation of the facts and law, since being on the expected lines, they do not require any interference by this Court to be made and hence the following judgment In result, (i)the above second appeal does not merit acceptance and it becomes only liable to be dismissed and is dismissed accordingly. (ii)The judgment and decree dated 23.4.1992 rendered in A.S.No.58 of 1982 by the Court of Subordinate Judge, Mayiladuthurai, thereby reversing the judgment and decree dated 2.4.1982 rendered in O.S.No.4 22 of 1979 of by the Court of District Munsif, Tiruvarur is hereby confirmed.

However, in the circumstances of the case, there shall be no order as to costs.

Index : Yes
Internet: Yes
gr.

To

1.The Subordinate Judge,
Mayiladuthurai

2.The District Munsif,
Tiruvarur.

□